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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/302,336    04/29/99    AVERILL    R    54839USA3A

TM02/1009

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EXAMINER

RIMELL, S

ART UNIT

PAPER NUMBER

2166

DATE MAILED:

10/09/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/302,336

Applicant(s)

AVERILL ET AL.

Examiner

Sam Rimell

Art Unit

2166

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 12 is/are rejected.
- 7) ☒ Claim(s) 9 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

This action is not made final.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “the severity of illness leveling matrix” lacks antecedent basis.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 10, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by DXCG Document.

The reference entitled DXCG Document is four pages of screenshots obtained from DXCG.com. The document includes two sections. The first section is entitled “From Diagnosis Codes to Diagnostic Cost Groups” and “How DXCG Models Predict Resource use”.

These articles describe DXCG models used by DXCG, INC. According to the DXCG.com website, these models have been validated in published research dating back to 1986.

As seen on page 1 of the section entitled “From Diagnosis Codes to Diagnostic Cost Groups”, the DXCG model starts by obtaining a set of medical care codes, which are the ICD-9-CM medical codes which are well known in the art. These codes are then categorized into major disease categories called “DxGroups”. These major disease categories are then categorized into episode disease categories called “HCCs”. Within each HCC, the severity of a particular illness

can be subcategorized. For example, metastatic cancer can be subcategorized as “Neoplasm 1”, while benign neoplasms can be subcategorized as “Neoplasm 8”.

There are 118 HCCs and each can be subcategorized by severity of illness, as seen by the neoplasms example above.

Some of the episode disease categories represent chronic conditions, such as cancer. These chronic conditions are subcategorized, as seen by the neoplasms example above.

The range of neoplasm severity from “Neoplasm 1” to “Neoplasm 8” represents a “leveling matrix” used to adjust the severity of illness for any given episode disease category.

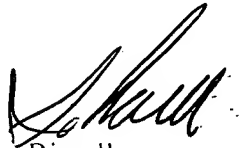
A second set of medical care codes is applied when a subject has a second simultaneous illness. On page 1, the subject has four simultaneous illnesses, and thus four sets of medical codes. Each set of medical codes is further defined into major disease categories and episode disease categories, with each episode disease category having a leveling matrix for chronic conditions.

As seen on the fourth page of the DXCG document, the episode disease categories are aggregated to define a clinical cost for that particular subject. The cost defines a rating for that subject.

Also on page 4, last paragraph, it is seen that a subject is assigned to the most severe clinical risk group for each episode disease category. For example, a subject having both of illnesses defined by subcategories Neoplasm 1 and Neoplasm 2, the subject is assigned the subcategory of Neoplasm 1, which is the most severe category.

Claims 9 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (703) 306-5626.



Sam Rimell -  
Primary Examiner  
Art Unit 2166